

By: Ellis

S.B. No. 1653

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the right of certain municipalities to maintain local
3 control over wages, hours, and other terms and conditions of
4 employment.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. The heading of Chapter 143, Local Government
7 Code, is amended to read as follows:

8 CHAPTER 143. MUNICIPAL CIVIL SERVICE FOR FIREFIGHTERS AND POLICE
9 OFFICERS

10 SECTION 2. Subtitle A, Title 5, Local Government Code, is
11 amended by adding Chapter 146 to read as follows:

12 CHAPTER 146. LOCAL CONTROL OF MUNICIPAL EMPLOYMENT MATTERS IN
13 CERTAIN MUNICIPALITIES

14 Sec. 146.001. APPLICABILITY. (a) This chapter applies
15 only to a municipality with a population of 1.5 million or more.

16 (b) This chapter does not apply to:

17 (1) firefighters or police officers who are covered by
18 Subchapter H, I, or J of Chapter 143 or by Chapter 174; or

19 (2) an employee association in which those employees
20 participate.

21 Sec. 146.002. DEFINITIONS. In this chapter:

22 (1) "Covered employee" means an employee of a
23 municipality, other than a department head or a firefighter or
24 police officer who is covered by Subchapter H, I, or J of Chapter

1 143 or by Chapter 174.

2 (2) "Employee association" means an organization in
3 which municipal employees participate and that exists for the
4 purpose, wholly or partly, of dealing with one or more employers,
5 whether public or private, concerning grievances, labor disputes,
6 wages, rates of pay, hours of employment, or conditions of work
7 affecting public employees and whose members pay dues by means of an
8 automatic payroll deduction.

9 (3) "Public employer" means any municipality or
10 agency, board, commission, or political subdivision controlled by a
11 municipality that is required to establish the wages, salaries,
12 rates of pay, hours, working conditions, and other terms and
13 conditions of employment of public employees. The term may
14 include, under appropriate circumstances, a mayor, manager,
15 administrator of a municipality, municipal governing body,
16 director of personnel, personnel board, or one or more other
17 officials regardless of the name by which they are designated.

18 Sec. 146.003. GENERAL PROVISIONS RELATING TO AGREEMENTS AND
19 RECOGNITION. (a) A municipality may not be denied local control
20 over the wages, salaries, rates of pay, hours of work, other terms
21 and conditions of employment, or other state-mandated personnel
22 issues. A public employer may enter into a mutual agreement
23 governing these issues with an employee association recognized
24 under this chapter as the sole and exclusive bargaining agent for
25 all covered employees that does not advocate the illegal right to
26 strike by municipal employees. The applicable statutes, local
27 ordinances, and civil service rules govern a term or condition of

1 employment on which the public employer and the association do not
2 agree.

3 (b) An agreement under this chapter must be written.

4 (c) This chapter does not require the public employer and
5 the recognized employee association to meet and confer or reach an
6 agreement on any issue.

7 (d) This chapter does not authorize an agreement regarding
8 pension or pension-related matters governed by Chapter 358, Acts of
9 the 48th Legislature, Regular Session, 1943 (Article 6243g,
10 Vernon's Texas Civil Statutes), or a successor statute.

11 Sec. 146.004. PETITION FOR RECOGNITION: ELECTION OR ACTION
12 BY GOVERNING BODY. (a) Not later than the 30th day after the date
13 the governing body of a municipality receives from an employee
14 association a petition signed by the majority of all covered
15 employees that requests recognition of the association as the sole
16 and exclusive bargaining agent for all the covered employees, the
17 governing body shall:

18 (1) grant recognition of the association as requested
19 in the petition and find that a public employer may meet and confer
20 under this chapter without conducting an election by the voters in
21 the municipality under Section 146.006;

22 (2) defer granting recognition of the association and
23 order an election by the voters in the municipality under Section
24 146.006 regarding whether a public employer may meet and confer
25 under this chapter; or

26 (3) order a certification election under Section
27 146.005 to determine whether the association represents a majority

1 of the covered employees.

2 (b) If the governing body of a municipality orders a
3 certification election under Subsection (a)(3) and the association
4 named in the petition is certified to represent a majority of the
5 covered employees, the governing body shall, not later than the
6 30th day after the date that results of that election are certified:

7 (1) grant recognition of the association as requested
8 in the petition for recognition and find that a public employer may
9 meet and confer under this chapter without conducting an election
10 by the voters in the municipality under Section 146.006; or

11 (2) defer granting recognition of the association and
12 order an election by the voters in the municipality under Section
13 146.006 regarding whether a public employer may meet and confer
14 under this chapter.

15 Sec. 146.005. CERTIFICATION ELECTION. (a) Except as
16 provided by Subsection (b), a certification election ordered under
17 Section 146.004(a)(3) to determine whether an employee association
18 represents a majority of the covered employees shall be conducted
19 according to procedures agreeable to the parties.

20 (b) If the parties are unable to agree on procedures for the
21 certification election, either party may request the American
22 Arbitration Association to conduct the election and to certify the
23 results of the election.

24 (c) Certification of the results of an election under this
25 section resolves the question concerning representation.

26 (d) The association is liable for the expenses of the
27 certification election, except that if two or more associations

1 seeking recognition as the sole and exclusive bargaining agent
2 submit a petition signed by at least 30 percent of the employees
3 eligible to sign the petition for recognition, all the associations
4 named in any petition shall share equally the costs of the election.

5 Sec. 146.006. ELECTION TO AUTHORIZE OPERATING UNDER THIS
6 CHAPTER. (a) The governing body of a municipality that receives a
7 petition for recognition under Section 146.004 may order an
8 election to determine whether a public employer may meet and confer
9 under this chapter.

10 (b) An election ordered under this section must be held as
11 part of the next regularly scheduled general election for municipal
12 officials that is held after the date the governing body of the
13 municipality orders the election and that allows sufficient time to
14 prepare the ballot in compliance with other requirements of law.

15 (c) The ballot for an election ordered under this section
16 shall be printed to permit voting for or against the proposition:
17 "Authorizing _____ (name of the municipality) to operate under
18 the state law allowing a municipality to meet and confer and make
19 agreements with the association representing municipal employees
20 as provided by state law, preserving the prohibition against
21 strikes and organized work stoppages, and providing penalties for
22 strikes and organized work stoppages."

23 (d) An election called under this section must be held and
24 the returns prepared and canvassed in conformity with the Election
25 Code.

26 (e) If an election authorized under this section is held,
27 the municipality may operate under the other provisions of this

1 chapter only if a majority of the votes cast at the election favor
2 the proposition.

3 (f) If an election authorized under this section is held, an
4 association may not submit a petition for recognition to the
5 governing body of the municipality under Section 146.004 before the
6 second anniversary of the date of the election.

7 Sec. 146.007. CHANGE OR MODIFICATION OF RECOGNITION.

8 (a) The municipal employees may modify or change the recognition
9 of the employee association granted under this chapter by filing
10 with the governing body of the municipality a petition signed by a
11 majority of all covered employees.

12 (b) The governing body of the municipality may:

13 (1) recognize the change or modification as provided
14 by the petition; or

15 (2) order a certification election in accordance with
16 Section 146.005 regarding whether to do so.

17 Sec. 146.008. STRIKES PROHIBITED. (a) A municipal
18 employee may not engage in a strike or organized work stoppage
19 against this state or the municipality.

20 (b) A municipal employee who participates in a strike
21 forfeits any civil service rights, reemployment rights, and other
22 rights, benefits, or privileges the employee may have as a result of
23 the employee's employment or prior employment with the
24 municipality.

25 (c) This section does not affect the right of a person to
26 cease work if the person is not acting in concert with others in an
27 organized work stoppage.

1 Sec. 146.009. RECOGNITION OF EMPLOYEE ASSOCIATION. (a) A
2 public employer in a municipality that chooses to meet and confer
3 under this chapter shall recognize an association that is
4 recognized under Section 146.004 or 146.005 as the sole and
5 exclusive bargaining agent for the covered employees.

6 (b) The public employer shall recognize the employee
7 association until recognition of the association is withdrawn, in
8 accordance with Section 146.007, by a majority of the municipal
9 employees eligible to sign a petition for recognition.

10 Sec. 146.010. SELECTION OF BARGAINING AGENT; BARGAINING
11 UNIT. (a) The public employer's chief executive officer or the
12 chief executive officer's designee shall select one or more persons
13 to represent the public employer as its sole and exclusive
14 bargaining agent to meet and confer on issues related to the wages,
15 hours of employment, and other terms and conditions of employment
16 of municipal employees.

17 (b) An employee association may designate one or more
18 persons to negotiate or bargain on the association's behalf.

19 (c) A municipality's bargaining unit is composed of all the
20 covered employees.

21 Sec. 146.011. PROTECTED RIGHTS OF EMPLOYEES. A meet and
22 confer agreement ratified under this chapter may not interfere with
23 the right of a member of a bargaining unit to pursue allegations of
24 discrimination based on race, creed, color, national origin,
25 religion, age, sex, or disability with the Texas Workforce
26 Commission civil rights division or the federal Equal Employment
27 Opportunity Commission or to pursue affirmative action litigation.

1 Sec. 146.012. OPEN RECORDS. (a) A proposed meet and
2 confer agreement and a document prepared and used by the
3 municipality, including a public employer, in connection with the
4 proposed agreement are available to the public under Chapter 552,
5 Government Code, only after the agreement is ready to be ratified by
6 the governing body of the municipality.

7 (b) This section does not affect the application of
8 Subchapter C, Chapter 552, Government Code, to a document prepared
9 and used in connection with the agreement.

10 Sec. 146.013. OPEN DELIBERATIONS. (a) Deliberations
11 relating to a meet and confer agreement or proposed agreement under
12 this chapter between representatives of the public employer and
13 representatives of the employee association recognized under this
14 chapter as the sole and exclusive bargaining agent for the covered
15 employees must be open to the public and comply with state law.

16 (b) Subsection (a) may not be construed to prohibit the
17 representatives of the public employer or the representatives of
18 the recognized employee association from conducting private
19 caucuses that are not open to the public during meet and confer
20 negotiations.

21 Sec. 146.014. RATIFICATION AND ENFORCEABILITY OF
22 AGREEMENT. (a) An agreement under this chapter is enforceable and
23 binding on the public employer, the recognized employee
24 association, and the employees covered by the meet and confer
25 agreement only if:

26 (1) the governing body of the municipality ratified
27 the agreement by a majority vote; and

1 (2) the recognized employee association ratified the
2 agreement by conducting a secret ballot election at which the
3 majority of the covered employees who are members of the
4 association favored ratifying the agreement.

5 (b) A meet and confer agreement ratified as described by
6 Subsection (a) may establish a procedure by which the parties agree
7 to resolve disputes related to a right, duty, or obligation
8 provided by the agreement, including binding arbitration on a
9 question involving interpretation of the agreement.

10 (c) A state district court of a judicial district in which
11 the municipality is located has jurisdiction to hear and resolve a
12 dispute under the ratified meet and confer agreement on the
13 application of a party to the agreement aggrieved by an action or
14 omission of the other party when the action or omission is related
15 to a right, duty, or obligation provided by the agreement. The
16 court may issue proper restraining orders, temporary and permanent
17 injunctions, or any other writ, order, or process, including
18 contempt orders, that are appropriate to enforcing the agreement.

19 Sec. 146.015. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO
20 OPERATE UNDER THIS CHAPTER. (a) The governing body of a
21 municipality that granted recognition of an employee association
22 under Section 146.004 without conducting an election under Section
23 146.006 may withdraw recognition of the association by providing to
24 the association not less than 90 days' written notice that:

25 (1) the governing body is withdrawing recognition of
26 the association; and

27 (2) any agreement between the governing body and the

1 association will not be renewed.

2 (b) The governing body of a municipality that granted
3 recognition of an employee association after conducting an election
4 under Section 146.006 may order an election to determine whether a
5 public employer may continue to meet and confer under this chapter.
6 The governing body may not order an election under this subsection
7 until the second anniversary of the date of the election under
8 Section 146.006.

9 (c) An election ordered under Subsection (b) must be held as
10 part of the next regularly scheduled general election for municipal
11 officers that occurs after the date the governing body of the
12 municipality orders the election and that allows sufficient time to
13 prepare the ballot in compliance with other requirements of law.

14 (d) The ballot for an election ordered under Subsection (b)
15 shall be printed to allow voting for or against the proposition:
16 "Authorizing _____ (name of the municipality) to continue to
17 operate under the state law allowing a municipality to meet and
18 confer and make agreements with the association representing
19 municipal employees as provided by state law, preserving the
20 prohibition against strikes and organized work stoppages, and
21 providing penalties for strikes and organized work stoppages."

22 (e) An election ordered under Subsection (b) must be held
23 and the returns prepared and canvassed in conformity with the
24 Election Code.

25 (f) If an election ordered under Subsection (b) is held, the
26 municipality may continue to operate under this chapter only if a
27 majority of the votes cast at the election favor the proposition.

1 (g) If an election ordered under Subsection (b) is held, an
2 association may not submit a petition for recognition to the
3 governing body of the municipality under Section 146.004 before the
4 second anniversary of the date of the election.

5 Sec. 146.016. ELECTION TO REPEAL AGREEMENT. (a) Not later
6 than the 45th day after the date a meet and confer agreement is
7 ratified by the governing body of the municipality and the
8 recognized employee association, a petition calling for the repeal
9 of the agreement signed by at least 10 percent of the qualified
10 voters residing in the municipality may be presented to the person
11 charged with ordering an election under Section 3.004, Election
12 Code.

13 (b) If a petition is presented under Subsection (a), the
14 governing body of the municipality shall:

15 (1) repeal the meet and confer agreement; or

16 (2) certify that it is not repealing the agreement and
17 call an election to determine whether to repeal the agreement.

18 (c) An election called under Subsection (b)(2) may be held
19 as part of the next regularly scheduled general election for the
20 municipality or a special election called by the governing body for
21 that purpose. The ballot shall be printed to provide for voting for
22 or against the proposition: "Repeal the meet and confer agreement
23 ratified on _____ (date agreement was ratified) by the _____
24 (name of the governing body of the municipality) and the _____
25 (recognized municipal employee association) concerning wages,
26 salaries, rates of pay, hours of work, and other terms of
27 employment."

1 (d) If a majority of the votes cast at the election favor the
2 repeal of the agreement, the agreement is void.

3 Sec. 146.017. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS.
4 A written meet and confer agreement ratified under this chapter
5 preempts, during the term of the agreement and to the extent of any
6 conflict, all contrary state statutes, local ordinances, executive
7 orders, civil service provisions, or rules adopted by this state or
8 a political subdivision or agent of this state, including a
9 personnel board, civil service commission, or home-rule
10 municipality, other than a statute, ordinance, executive order,
11 civil service provision, or rule regarding pensions or
12 pension-related matters.

13 SECTION 3. This Act takes effect September 1, 2005.